

Pt. 2880

**PART 2880—RIGHTS-OF-WAY
UNDER THE MINERAL LEASING ACT**

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- 2887.0-3 Authority.

AUTHORITY: 30 U.S.C. 185, sec. 28, unless otherwise noted.

EFFECTIVE DATE NOTE: At 67 FR 61276, Sept. 30, 2002, the authority for part 2880 was revised, effective Nov. 29, 2002. For the convenience of the user, the revised text is set forth as follows:

AUTHORITY: 30 U.S.C. 185.

SOURCE: 44 FR 58129, Oct. 9, 1979, unless otherwise noted.

**Subpart 2880—Oil and Natural
Gas Pipelines and Related Fa-
cilities: General**

§ 2880.0-3 Authority.

The provisions of this subpart are issued under the authority of section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), unless otherwise noted.

§ 2880.0-5 Definitions.

As used in this part, the term:

(a) *Act* means section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185).

(b) *Agency head* means the head of any Federal department or independent Federal office or agency, other than the Secretary of the Interior, who has jurisdiction over the surface of Federal lands.

(c) *Applicant* means any individual, partnership, corporation, association, or other business entity, or any State or local governmental entity or agency, which applies for a right-of-way grant or temporary use permit under the Act.

(d) *Authorized officer* means any employee of the department of the Interior to whom has been delegated the authority to perform the duties described in this part.

(e) *Federal lands* means all lands owned by the United States except lands in the National Park System,

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lands held in trust for an Indian or Indian tribe, and lands on the Outer Continental Shelf.

(f) *Holder* means any individual, partnership, corporation, association, or other business entity, or any State or local governmental entity or agency which has received a right-of-way grant or temporary use permit under the Act.

(g) *Oil or gas* means oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom.

(h) *Temporary use permit* means a revocable nonpossessory privilege to use specified Federal lands in the vicinity of a right-of-way in connection with the construction, operation, maintenance, or termination of a pipeline or for the protection of the natural environment or public safety.

(i) *Pipeline* means a line of traversing Federal lands for transportation of oil or gas. The term includes feeder lines, trunk lines, and related facilities, but does not include a lessee's or lease operator's production facilities located on his lease.

(j) *Pipeline system* means all facilities, whether or not located on Federal lands, used by a holder in connection with the construction, operation, maintenance, or termination of a pipeline.

(k) *Production facilities* means a lessee's or lease operator's pipes and equipment used on his lease solely to aid in his extraction, storage, and processing of oil and gas. The term includes storage tanks and processing equipment, and gathering lines upstream from such tanks and equipment, or in the case of gas, upstream from the point of delivery. The term also includes pipes and equipment, such as water and gas injection lines, used in the production process for purposes other than carrying oil and gas downstream from the wellhead.

(l) *Related facilities* means those structures, devices, improvements, and sites, the substantially continuous use of which is necessary for the operation or maintenance of a pipeline, which are located on Federal lands, and which are authorized under the Act, including but not limited to: Supporting structures; airstrips; roads; campsites; pump

stations, including associated heliports, structures, yards, and fences; valves, and other control devices; surge and storage tanks; bridges; monitoring and communication devices and structures housing them; terminals, including structures, yards, docks, fences, and storage tank facilities; retaining walls, berms, dikes, ditches, cuts, and fills; structures and areas for storing supplies and equipment. Related facilities may be connected or nonconnected or contiguous or noncontiguous to the pipe.

(m) *Right-of-way* means the Federal land authorized to be occupied pursuant to a right-of-way grant.

(n) *Right-of-way grant* means a document authorizing a nonpossessory, nonexclusive right to use Federal lands for the limited purpose of construction, operation, maintenance, and termination of a pipeline.

(o) *Secretary* means the Secretary of the Interior.

[44 FR 58129, Oct. 9, 1979, as amended at 45 FR 59880, Sept. 11, 1980]

§ 2880.0-7 Scope.

(a) These regulations apply to any application now on file or hereafter filed with Federal agencies for issuance, modification, or renewal of a right-of-way grant or a temporary use permit, except where the surface of the Federal lands involved in the right-of-way or temporary use permit area is under the jurisdiction of a single Federal agency, including bureaus and agencies within the Department of the Interior, other than the Bureau of Land Management.

(b) In addition, the provisions of § 2883.5 of this title apply to all right-of-way grants and temporary use permits heretofore issued pursuant to section 28 of the Mineral Leasing Act by the Bureau of Land Management, and to permits, grants, and other authorizations heretofore issued by the Secretary or his delegate in connection with the Trans-Alaska Oil Pipeline System (TAPS). Further, the permits, grants and other authorizations heretofore and hereafter issued by the Secretary or his delegate in connection with the Trans-Alaska Pipeline System are subject to § 2883.1-1 of this title.

(c) The regulations of this part do not apply to the reservation of rights-of-way for Federal departments or agencies. Such rights-of-way shall be reserved in accordance with the regulations in subpart 2800 of this title.

(Sec. 28, Mineral Leasing Act, as amended and supplemented (30 U.S.C. 181 *et seq.*), sec. 203, Trans-Alaska Pipeline Authorization Act (Pub. L. 95-153); Independent Offices Appropriation Act of 1952 (31 U.S.C. 483a))

[44 FR 58129, Oct. 9, 1979, as amended at 49 FR 31209, Aug. 3, 1984; 51 FR 31765, Sept. 5, 1986]

§ 2880.0-9 Information collection.

The information collection requirements contained in part 2880 of Group 2800 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance numbers 1004-0102 and 1004-0107. The information is being collected to permit the authorized officer to determine if use of the public lands should be granted for rights-of-way grants or temporary use permits. The information will be used to make this determination. A response is required to obtain a benefit.

[60 FR 57072, Nov. 13, 1995]

Subpart 2881—Terms and Conditions of Right-of-Way Grants and Temporary Use Permits

§ 2881.1 Nature of interest.

§ 2881.1-1 Nature of right-of-way interest.

(a) The United States retains a right to use a right-of-way and temporary use permit area or authorize the use of it to others in any manner not inconsistent with pipeline construction, operation, maintenance, and termination. The holder of a right-of-way grant or temporary use permit has no right to any of the products of the land including, but not limited to, timber, forage, mineral, and animal resources. The holder may not allow the use of a right-of-way or temporary use permit area by others except its contractors, subcontractors, employees, agents or servants for purposes of construction, operation, maintenance, or termination of the pipeline.

(b) A holder shall not use a right-of-way and temporary use permit area for any purpose other than for the construction, operation, maintenance, and termination of the pipeline specified in the holders right-of-way grant. A holder shall not locate or construct any other pipelines, including looping lines, or other improvements within a right-of-way without first securing appropriate authorization therefor.

(c) The width of a right-of-way shall not exceed 50 feet plus the ground occupied by the pipeline (that is, the pipe and related facilities) unless the authorized officer finds and records the reasons for his finding, that a wider right-of-way is necessary for operation and maintenance after construction, or to protect the environment or public safety.

(d) An applicant may apply to the authorized officer for a wider right-of-way in limited areas, if necessary:

(1) For the operation and maintenance of the project after construction;

(2) To protect the environment; or

(3) To provide for the public safety. If the authorized officer finds that the additional width is necessary for one of the above reasons, he may authorize a wider width. Such authorization shall include a written report recording the reasons why the additional width is necessary.

(e) A right-of-way grant issued or renewed under these regulations shall be limited to a reasonable term, not to exceed 30 years. No term shall be longer than is necessary to accomplish the purpose of the grant. The authorized officer shall determine the duration of each right-of-way grant, taking into consideration, among other things:

(1) The cost of the facility,

(2) Its useful life,

(3) Any public purpose it serves, and

(4) Potentially conflicting uses of the land.

(f) Except where a right-of-way grant has terminated by its terms upon the occurrence of a fixed or agreed upon condition, event, or time, it shall be renewed if the pipeline is being operated and maintained in accordance with all provisions of the right-of-way grant, these regulations and the Act. The authorized officer may modify the terms

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and conditions of the right-of-way grant at the time of renewal.

(g) No purported transfer of an interest in a right-of-way grant, a right-of-way, or any portion of a pipeline system located within a right-of-way, shall be valid without the prior written approval of the authorized officer. Applications for such approval shall be directed to the authorized officer. A transferee shall meet all the requirements of an original pipeline right-of-way grantee is bound by and shall assume all of the transferor's responsibility to the United States with respect to the transferred interest and shall agree to be bound by all terms of any outstanding right-of-way grant or temporary use permit. Applications for a transfer of interest shall be accompanied by a nonrefundable fee of \$50, except that where a holder assigns more than 1 right-of-way grant as part of a single action, the authorized officer, due to economies of scale, may set a fee of less than \$50 per assignment.

[44 FR 58129, Oct. 9, 1979, as amended at 52 FR 25821, July 8, 1987]

§ 2881.1-2 Nature of temporary use permit interest.

(a) A temporary use permit does not grant any interest in land and is revocable at will by the authorized officer.

(b) The area covered by a temporary use permit shall be no greater than is necessary to accommodate the authorized use or to protect the environment or provide for public safety.

(c) The duration of a temporary use permit shall be determined by the authorized officer in a manner that is consistent with construction activities, and is not to exceed that length of time needed to accomplish the purpose for which the permit is sought. The term of a temporary use permit shall not exceed 3 years subject to the provisions of this section.

(d) A temporary use permit may be renewed at the discretion of the authorized officer, but the permittee has no right of renewal. The authorized officer may modify the terms and conditions of the temporary use permit at the time of renewal.

(e) A temporary use permit may be assigned at the discretion of the au-

thorized officer, provided the use for which the permit was issued continues.

§ 2881.1-3 Reservation of rights to the United States.

All rights in Federal lands subject to a right-of-way grant or temporary use permit not expressly granted are retained by the United States. These rights include, but are not limited to:

(a) A continuing right of access across right-of-way and temporary use permit areas to all Federal lands (including the subsurface and air space);

(b) A continuing right of physical entry to any part of the pipeline system for inspection, monitoring, or for any other purpose or reason consistent with any right or obligation of the United States under any law or regulation; and

(c) The right to make, issue, or grant right-of-way grants, temporary use permits, easements, leases, licenses, contracts, patents, permits and other authorizations to or with third parties for compatible uses on, under, above, or adjacent to the Federal lands subject to a right-of-way grant or temporary use permit.

§ 2881.2 Terms and conditions of interest granted.

(a) An applicant, by accepting a right-of-way grant or a temporary use permit, agrees and consents to comply with and be bound by the following terms and conditions, excepting those which the Secretary may waive in a particular case:

(1) To the extent practicable, all State and Federal laws applicable to the pipeline system construction, operation and maintenance which is authorized and all such additional State and Federal law, along with the implementing regulations, that may be enacted and issued during the term of the grant or permit;

(2) That in the construction, operation and maintenance of the pipeline and related facilities, there shall be no discrimination against any employee or applicant for employment because of race, creed, color, sex or national origin and all subcontracts shall include an identical provision;

(3) To build and repair roads, fences and trails that may be destroyed or

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damaged by construction, operation or maintenance of the pipeline and related facilities and to build and maintain suitable crossings for roads and trails that intersect the right-of-way and related facilities; and

(4) To do everything reasonably within his or her power, both independently and upon request of the authorized officer, to prevent and suppress fires on or near the right-of-way and related facilities. This includes making available such construction and maintenance forces as may be reasonably obtained for the suppression of fires.

(b) All right-of-way grants and temporary use permits issued, renewed, or amended under these regulations shall contain such terms, conditions, and stipulations as may be prescribed by the authorized officer regarding extent, duration, survey, location, construction, operation, maintenance, use, and termination. The authorized officer shall impose stipulations which shall include, but shall not be limited to:

(1) Requirements for restoration, revegetation, and curtailment of erosion of the surface of the land;

(2) Requirements to insure that activities in connection with the right-of-way grant or temporary use permit shall not violate applicable air and water quality standards or related facility siting standards established by or pursuant to applicable Federal and State law;

(3) Requirements designed to control or prevent damage to the environment (including damage to fish and wildlife habitat), damage to public or private property, and hazards to public health and safety; and

(4) Requirements to protect the interests of individuals living in the general vicinity of the right-of-way or temporary use permit area who rely on the fish, wildlife, and biotic resources of the area for subsistence purposes.

(c) Right-of-way grants or temporary use permits issued, renewed, or amended under this title shall include requirements which comply with applicable Federal and State law that will protect the safety and health of pipeline workers and the general public, including, but not limited to, protection against the sudden rupture and slow degradation of the pipeline. Applicants

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and holders shall design, construct, operate, and maintain all facilities in accordance with applicable Federal and State law governing pipelines and pipeline construction.

[44 FR 58129, Oct. 9, 1979, as amended at 52 FR 25821, July 8, 1987]

§ 2881.3 Unauthorized use, occupancy or development.

Any use, occupancy, or development of the public lands that requires a right-of-way, temporary use permit, or other authorization pursuant to the regulations in this part, and that has not been so authorized, or that is beyond the scope and specific limitations of such authorization, or that causes unnecessary or undue degradation, is prohibited and shall constitute a trespass as defined in § 2800.0-5. Anyone determined by the authorized officer to be in trespass on the public lands shall be notified in writing of such trespass and shall be liable to the United States for all costs and payments determined in the same manner as set forth at § 2801.3, part 2800 of this title.

[54 FR 25855, June 20, 1989]

Subpart 2882—Applications

§ 2882.1 Preapplication activity.

(a) Upon determining that a proposed pipeline project is contemplated which would cross Federal lands under the jurisdiction of the Department of the Interior, or two or more Federal agencies, the proponent of such project is encouraged to promptly notify the appropriate office identified in § 2882.2-2 of this title or the Secretary.

(b) The authorized officer shall provide guidance to the pipeline project proponent as to:

(1) Routing constraints which exist because of current land status as reflected in land use plans and land status records;

(2) Necessary information to be included in applications for right-of-way grants or temporary use permits;

(3) Qualifications required of applicants; and

(4) Identification of on-the-ground investigations which will require temporary use permits.

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(c) No right-of-way applications processing work, other than that incurred in the processing of applications for permits for temporary use of public lands in furtherance of the filing of an application and preapplication guidance under paragraph (b) of this section, shall be undertaken by the authorized officer prior to the filing of an application together with an advance payment as required by § 2883.1-1 of this title. Such processing work includes, but is not limited to, special studies such as environmental analyses, environmental impact statements, engineering surveys, resource inventories and detailed land use or record analyses.

(d) No activities, other than casual use, such as, but not limited to, vehicle use on existing roads, sampling, marking of routes, searching, or other similar activities that do not disturb the surface of the lands or require the removal of vegetation, shall be conducted on Federal lands prior to the issuance of a right-of-way grant or a temporary use permit.

[44 FR 58129, Oct. 9, 1979, as amended at 47 FR 38807, Sept. 2, 1982; 50 FR 1309, Jan. 10, 1985; 51 FR 31765, Sept. 5, 1986]

§ 2882.2 Requirements for applications for right-of-way grants and temporary use permits.

§ 2882.2-1 Applicant qualifications.

(a) An applicant for a right-of-way grant or temporary use permit shall be a citizen of the United States, an association of such citizens, a corporation organized under the laws of the United States, or of any State thereof, or a State or local government. Aliens may not acquire or hold any direct or indirect interest in rights-of-way, right-of-way grants or temporary use permits, except that they may own or control stock in corporations holding rights-of-way, right-of-way grants or temporary use permits if the laws of their country do not deny similar or like privileges to citizens of the United States.

(b) Each application by a partnership, corporation, association, or other business entity shall disclose the identity of the participants in the entity and shall include where applicable:

(1) The name, address, and citizenship of each participant (partner, associate or other);

(2) Where the applicant is a corporation, the name, address, and citizenship of each shareholder owning 3-percent or more of each class of shares, together with the number and percentage of any class of voting shares of the entity which each shareholder is authorized to vote; and

(3) The name and address of each affiliate controlled by, or that controls, the entity, either directly or indirectly. Where an affiliate is controlled by the entity, the application shall disclose the number of shares and the percentage of each class of voting stock of that affiliate owned, directly or indirectly, by the entity. If an affiliate controls the entity, the number of shares and the percentage of each class of voting stock of the entity owned, directly or indirectly, by the affiliate shall be included.

(c) Applications filed with Federal agencies, such as the Federal Energy Regulatory Commission, to obtain a license, certificate or other authority for a project involving a right-of-way over, upon, under or through Federal lands for an oil and gas pipeline shall be simultaneously filed with the Bureau of Land Management in accordance with the provisions of § 2882.2-3 of this title.

[44 FR 58129, Oct. 9, 1979, as amended at 47 FR 12571, Mar. 23, 1982]

§ 2882.2-2 Application filing.

(a) Where the Federal lands involved are under the jurisdiction of the Bureau of Land Management, Department of the Interior, application for a right-of-way grant or temporary use permit or for a renewal of either shall be filed with either the Area Manager, the District Manager or the State Director of a Bureau of Land Management office having jurisdiction over the Federal lands involved.

(b) Where the Federal lands involved are under the jurisdiction of two or more agencies of the Department of the Interior, or where the Federal lands involved are under the jurisdiction of one or more agencies of the Department of the Interior and one or more other Federal agencies, or where the Federal

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lands involved are under the jurisdiction of two or more non-Interior agencies, the initial application for a right-of-way grant or temporary use permit may be filed at the most convenient State Office of the Bureau of Land Management, at locations listed in § 1821.2-1 of this title or at the nearest Bureau of Land Management Office that has jurisdiction over a portion of the Federal lands involved. The Director, Bureau of Land Management will, upon notice of the application by field officials, assign a lead official and notify the applicant where all future communications concerning the project should be directed. All applications for temporary use permits that are filed subsequent to the filing of an application for a right-of-way grant shall be filed with the lead official. Applications for renewal of a right-of-way grant or temporary use permit shall be filed with the lead official.

(c) Where the Federal lands involved are under the jurisdiction of but one Federal agency, including bureaus and agencies within the Department of the Interior other than the Bureau of Land Management, applications for a right-of-way grant or temporary use permit or renewal of either shall be directed to that agency.

[44 FR 58129, Oct. 9, 1979, as amended at 45 FR 34887, May 23, 1980; 47 FR 12571, Mar. 23, 1982]

§ 2882.2-3 Application content.

(a) Applications for right-of-way grants and temporary use permits shall be filed on a form approved by the Director. The application form shall contain instructions for completion of the form and shall require the following information:

(1) The name and address of the applicant and the applicant's agent, if appropriate;

(2) A description of the applicant's proposal;

(3) A map, USGS quadrangle, aerial photo or equivalent, showing the approximate location of the proposed right-of-way and facilities on public lands and existing improvements adjacent to the proposal, shall be attached to the application. Only the existing adjacent improvements which the proposal may directly affect need be shown on the map;

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(4) A statement of the applicant's technical and financial capability to construct, operate, maintain and terminate the proposals;

(5) Certification by the applicant that he/she is of legal age, authorized to do business in the State and that the information submitted is correct to the best of the applicant's knowledge; and

(6) Disclose, to the extent applicable, the applicant's citizenship and the partnership, corporation, association and other business entity information required by § 2882.2-1 of this title.

(b) The applicant may submit additional information to assist the authorized officer in processing the application. Such information may include, but is not limited to, the following:

(1) Federal or State approvals required for the proposal;

(2) A description of the alternative route(s) and mode(s) considered by the applicant when developing the proposal;

(3) Copies of or reference to similar applications or grants the applicant has submitted or holds;

(4) A statement of need and economic feasibility or other proposal; and

(5) A statement of the environmental, social and economic effects of the proposal.

[47 FR 12571, Mar. 23, 1982]

§ 2882.3 Application processing.

(a) The Secretary shall notify the House Committee on Interior and Insular Affairs and the Senate Committee on Energy and Natural Resources promptly upon receipt of an application for a right-of-way grant for a pipeline 24 inches or more in diameter and no right-of-way grant for such a pipeline shall be issued until 60 days (not counting days on which the House of Representatives or the Senate has adjourned for more than 3 days) after a notice of intention to issue the right-of-way grant, together with the authorized officer's detailed findings as to terms and conditions he proposes to impose, has been submitted to such committees, unless each committee by resolution waives the waiting period.

(b) Upon receipt of an application for a right-of-way grant, the authorized officer shall publish a notice of the application in the FEDERAL REGISTER and an

announcement in a newspaper or newspapers having general circulation in the vicinity of the Federal lands affected, or, if in the opinion of the authorized officer, the pipeline impacts are of a minor nature, the notice of application may be waived or published only in a newspaper having general circulation in the area or areas in the vicinity of the affected Federal lands. The notice shall contain a description of the pipeline systems as required in §2882.2-3(a) (2) and (3) of this title, together with such other information as the authorized officer considers pertinent. The notice shall state where the application and related documents are available for interested persons to review. Copies of the notice shall be sent to the Governor of each State within which the pipeline system may be located, the head of each local government or jurisdiction within which the pipeline system may be located, and each agency head, for review and comment.

(c) Where an application for a right-of-way grant or temporary use permit is incomplete or not in conformity with the Act or these regulations, the authorized officer may reject the application or notify the applicant of the deficiencies and afford the applicant an opportunity to file corrections. Where deficiency notices have not been adequately complied with, the authorized officer may reject the application or notify the applicant of the continuing deficiencies and afford the applicant an opportunity to file corrections.

(d) The authorized officer may require the applicant for a right-of-way grant or temporary use permit to submit such additional information as he deems necessary for review of the application.

(e) An application for a right-of-way grant or temporary use permit which meets the requirements of the Act and of these regulations entitles the applicant only to full review of the application. Such application may be denied if the authorized officer determines that the right-of-way or use applied for would be inconsistent with the purpose to which the Federal lands involved have been committed, or would otherwise not be in the public interest.

(f) The authorized officer shall hold public meetings or hearings on an application for a right-of-way grant or temporary use permit if he determines that such hearings or meetings are appropriate and sufficient public interest exists to warrant the time and expense of such meetings or hearings. Notice of any such meetings or hearings shall be published in the FEDERAL REGISTER and in local newspapers.

(g) If the application involves a right-of-way through Federal lands under the jurisdiction of two or more Federal agencies, the authorized officer shall refer the application to the agency heads for consultation and other appropriate actions.

(h) The authorized officer shall consult with other agencies as to any additional information which should be required from the applicant, conditions or stipulations which should be imposed, and whether the right-of-way grant or temporary use permit should be issued.

(i) No right-of-way grant or temporary use permit over Federal lands under the jurisdiction of two or more Federal agencies and not within the jurisdiction of the agency by which the authorized officer is employed shall be issued or renewed by the authorized officer without the concurrence of the head of the agency administering such Federal lands or his authorized representative.

(j) Where the surface of the Federal lands involved is administered by the Secretary or by two or more Federal agencies, the Secretary may, after consultation with the non-Interior agencies involved, grant or renew a right-of-way or temporary use permit through the Federal lands involved, with or without the concurrence of the heads of the agencies administering such Federal lands. A right-of-way through a Federal reservation shall not be granted if the Secretary determines that it would be inconsistent with the purposes of the reservation.

(k) A right-of-way grant or temporary use permit need not conform to the applicant's proposal, but may contain such modifications, terms, stipulations or conditions including changes in route or site location as the authorized officer considers appropriate.

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(l) No right-of-way grant or temporary use permit shall be considered as being in effect until the applicant has accepted its terms, in writing. Written acceptance shall constitute an agreement between an applicant and the United States that, in consideration of the right to use Federal lands, the applicant shall abide by all terms and conditions contained therein and the provisions of applicable laws and regulations.

(m) At the discretion of the authorized officer, a provision may be placed in a right-of-way grant or temporary use permit requiring that no construction or use shall occur until a detailed construction, operation, rehabilitation and environmental protection plan has been submitted to the authorized officer and a notice to proceed has been issued. This requirement may be imposed for all or any part of the right-of-way.

[44 FR 58129, Oct. 9, 1979, as amended at 47 FR 12571, Mar. 23, 1982]

EFFECTIVE DATE NOTE: At 67 FR 61276, Sept. 30, 2002, § 2882.3 was amended by revising paragraph (a), effective Nov. 29, 2002. For the convenience of the user, the revised text is set forth as follows:

§ 2882.3 Application processing.

(a) If the grant involves a pipeline 24 inches or more in diameter, BLM will not issue or renew the grant until after we notify the appropriate committees of Congress in accordance with 30 U.S.C. 185(w).

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§ 2882.4 Interagency agreements.

The authorized officer may enter into interagency cooperative agreements with the other Federal agencies having jurisdiction over the Federal lands involved in right-of-way grants or temporary use permits applied for and issued under this part.

Subpart 2883—Administration of Rights Granted

§ 2883.1 General requirements.

§ 2883.1–1 Cost reimbursement.

(a) (1) An applicant for a right-of-way grant or a temporary use permit shall reimburse the United States for admin-

istrative and other costs incurred by the United States in processing the application, including the preparation of reports and statements pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347), prior to the United States having incurred such costs. All costs shall be paid before the right-of-way grant or temporary use permit shall be issued under the regulations of this title.

(2) The regulations contained in this subpart do not apply to State or local governments or agencies or instrumentalities thereof where the Federal lands are used for governmental purposes and such lands and resources continue to serve the general public, except as to right-of-way grants or temporary use permits issued to State or local governments or agencies or instrumentalities thereof or a municipal utility or cooperative whose principal source of revenue is derived from charges levied on customers for services rendered that are similar to services rendered by a profit making corporation or business enterprise.

(3) The applicant shall submit with each application a nonrefundable application processing fee in the amount required by a schedule of fees for this purpose contained in paragraph (c) of this section which shall be based on a review of the use of the Federal lands for which the application is made, the resources affected and the complexity and costs to the United States for processing required by an application for a right-of-way grant and shall be established according to the following general categories:

(i) *Category I.* An application for a right-of-way grant or temporary use permit to authorize a use of Federal lands for which the data necessary to comply with the National Environmental Policy Act are available in the office of the authorized officer; and no field examination of the lands affected by the application is required;

(ii) *Category II.* An application for a right-of-way grant or temporary use permit to authorize a use of Federal lands for which the data necessary to comply with the National Environmental Policy Act are available in the office of the authorized officer; and one field examination of the lands affected

by the application to verify the existing data is required;

(iii) *Category III.* An application for a right-of-way grant or temporary use permit to authorize a use of Federal lands for which the data necessary to comply with the National Environmental Policy Act are available in the office of the authorized officer; and two field examinations of the lands affected by the application to verify the data are required;

(iv) *Category IV.* An application for a right-of-way grant or temporary use permit to authorize a use of Federal lands for which some original data are required to be gathered to comply with the National Environmental Policy Act; and two or three field examinations of the lands affected by the application are required;

(v) *Category V.* An application for a right-of-way grant or temporary use permit to authorize a use of Federal lands for which original data are required to be gathered to comply with the National Environmental Policy Act and evaluation of these data require formation of an interdisciplinary team; and three or more field examinations of the lands affected by the application are required;

(vi) *Category VI.* An application for a right-of-way grant or temporary use permit to authorize a use of Federal lands for which the cost of processing activities will be in excess of \$5,000.

(4)(i) The authorized officer may accept an application for the purpose of determining the appropriate category and the nonrefundable application processing fee; however, the authorized officer shall collect the full amount of the nonrefundable application processing fee prior to processing such application. A record of the authorized officer's category determination shall be made and given to the applicant, and the decision is a final decision for purposes of appeal under § 2884.1 of this title. Notwithstanding the pendency of such appeal, an application shall not be processed without payment of the fee determined by the authorized officer, and where such payment is made, the application may be processed and, if proper, the grant or permit issued. The authorized officer shall make any refund directed by the appeal decision.

Where the amount of the nonrefundable application processing fee submitted by an applicant exceeds the amount of such fee as determined by the authorized officer, the authorized officer shall refund any excess unless requested in writing by the applicant to apply all or part of any such refund to the grant monitoring fee required by paragraph (b) of this section or to the rental payment for such grant or permit.

(ii) During the processing of an application, the authorized officer may change a category determination to place an application in Category VI at any time that it is determined that the application requires preparation of an environmental impact statement. A record of change in category determination under this paragraph shall be made, and the decision is appealable in the same manner as an original category determination made under paragraph (a)(4)(i) of this section.

(5) (i) An applicant whose application is determined to be in Category VI shall, in addition to the nonrefundable application processing fee, reimburse the United States for the full actual administrative and other costs of processing the application. The nonrefundable application processing fee required under the fee schedule shall be credited toward the total cost reimbursement obligation of such applicant. When such an application is filed, the authorized officer shall estimate the costs expected to be incurred in processing the application, inform the applicant of the estimated amount to be reimbursed and require the applicant to make periodic payments of such estimated reimbursable costs prior to such costs being incurred by the United States.

(ii) If the payments required by paragraph (a)(5)(i) of this section exceed the actual costs to the United States, the authorized officer may adjust the next billing to reflect the overpayment, or make a refund from applicable funds under the authority of 43 U.S.C. 1734. An applicant may not set off or otherwise deduct any debt due to it or any sum claimed to be owed it by the United States without the prior written approval of the authorized officer.

(iii) Prior to issuance of a right-of-way grant or temporary use permit, an

applicant subject to paragraph (a)(5)(i) of this section shall pay such additional amounts as are necessary to reimburse the United States for any costs which exceed the payments required by paragraph (a)(5)(i) of this section.

(iv) An applicant subject to paragraph (a)(5)(i) of this section whose application is denied is responsible for costs incurred by the United States in processing the application, and such amounts as have not been paid in accordance with paragraph (a)(5)(i) of this section are due within 30 days of receipt of a bill from the authorized officer giving the amount due.

(v) An applicant subject to paragraph (a)(5)(i) of this section who withdraws an application before a decision is reached is responsible for costs incurred by the United States in processing the application up to the date the authorized officer receives written notice of the withdrawal, and for costs subsequently incurred in terminating the application review process. Such amounts as have not been paid in accordance with paragraph (a)(5)(i) of this section are due within 30 days of receipt of a bill from the authorized officer giving the amount due.

(6) When 2 or more applications for right-of-way grants are filed which the authorized officer determines to be in competition with each other, each applicant shall reimburse the United States as required by paragraph (a)(3) of this section. If reimbursement of actual costs is required under paragraph (a)(5)(i) of this section, each applicant shall be responsible for the costs identifiable with his/her application. Costs that are not readily identifiable with one of the applications, such as costs for portions of an environmental impact statement that relate to all of the applications generally, shall be paid by each of the applicants in equal shares or such other proration as may be agreed to in writing by the applicants and authorized officer prior to the United States incurring such costs.

(7) When, through partnership joint venture or other business arrangement, more than one person partnership, corporation, association or other entity apply together for a right-of-way grant or temporary use permit, each such ap-

plicant shall be jointly and severally liable for costs under this section.

(8) When 2 or more noncompeting applications for right-of-way grants are received for what, in the judgment of the authorized officer, is one right-of-way system, all of the applicants shall be jointly and severally liable for costs under this section for the entire system, subject, however, to the provisions of paragraph (a)(7) of this section.

(b) (1) After issuance of a right-of-way grant or temporary use permit for which a fee was assessed under paragraph (a) of this section, the holder thereof shall, prior to the United States having incurred such costs, reimburse the United States for costs incurred by the United States in monitoring the construction, operation, maintenance and termination of authorized facilities on the right-of-way or permit area, and for protection and rehabilitation of the lands involved. The monitoring cost category shall be the same as that for the application processing category for that project.

(2) The holder shall submit a monitoring cost fee along with the written acceptance of the terms and conditions of the grant or permit pursuant to § 2882.3(1) of this title. The amount of the required fee shall be determined by the schedule of fees described in paragraph (c) of this section. Acceptance of the terms and conditions of the grant or permit shall not be effective unless the required fee is paid.

(3) A holder whose application was determined to be in Category VI for application processing purposes shall reimburse the United States for the actual administrative costs and other costs of monitoring the grant or permit. When such a grant or permit is issued, the authorized officer shall estimate the costs expected to be incurred in monitoring the grant or permit, inform the holder of the estimated amount to be reimbursed and require the holder to make periodic payment of such estimated reimburseable costs prior to such costs being incurred by the United States.

(4) If the payments required by paragraph (b)(3) of this section exceed the actual costs of the United States, the authorized officer may adjust the next billing to reflect the overpayment, or

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make a refund from applicable funds under the authority of 43 U.S.C. 1734. A holder may not set off or otherwise deduct any debt due to it or any sum claimed to be owed it by the United States without the prior written approval of the authorized officer.

(5) Following termination of a right-of-way grant or temporary use permit, any grantee or permittee that was determined to be in Category VI shall pay such additional amounts as are necessary to reimburse the United States for any costs which exceed the payments required by paragraph (b)(3) of this section.

(c) The schedules of nonrefundable fees are as follows:

(1) For processing an application for a right-of-way and/or temporary use permit:

Category	Fee
I	\$125
II	275
III	350
IV	600
V	1,000
VI	¹ 5,000

¹ A minimum of—.

(2) For monitoring a right-of-way grant or temporary use permit:

Category	Fee
I	\$25
II	50
III	75
IV	150
V	250
VI	(¹)

¹ As required.

(d) Reimbursement of costs for application processing and administration of right-of-way grants and temporary use permits pertaining to the Trans-Alaska Pipeline System shall be made by payment of such sums as the Secretary determines to be required to reimburse the Department of the Interior for the actual costs of these services. In processing applications and administering right-of-way grants and temporary use permits relating to the Trans-Alaska Pipeline System, the Department of the Interior shall avoid unnecessary employment of personnel and needless expenditure of funds as determined by the Secretary. Reimbursement of costs shall be made for each quarter ending on the last day of

March, June, September and December. On or before the 16th day after the close of each quarter, the authorized officer shall submit to the permittee a written statement of costs incurred during that quarter which are reimbursable.

[50 FR 1309, Jan. 10, 1985 and 51 FR 31765, Sept. 5, 1986]

§ 2883.1-2 Rental payments.

Holders of right-of-way grants and temporary use permits issued under this part shall make rental payments in accordance with § 2803.1-2 of this title, except that the provisions of § 2803.1-2(b) of this title shall not apply.

[47 FR 38807, Sept. 2, 1982, as amended at 52 FR 25821, July 8, 1987]

§ 2883.1-3 Bonding.

The authorized officer may require a holder of a right-of-way grant or temporary use permit to furnish a bond, or other security satisfactory to him, to secure all or any of the obligations imposed by the right-of-way grant and temporary use permits and applicable laws and regulations.

§ 2883.1-4 Liability.

(a) Except as provided in paragraph (f) of this section holders shall be fully liable to the United States for any damage or injury incurred by the United States in connection with the use and occupancy of the right-of-way or permit area.

(b) Except as provided in paragraph (f) of this section, holders shall be held to a standard of strict liability for any activity within a right-of-way or permit area which the authorized officer determines, in his discretion, presents a foreseeable hazard or risk of damage or injury to the United States. The activities and facilities to which such standard shall apply shall be specified in the right-of-way grant or temporary use permit. Strict liability shall not be imposed for damage or injury resulting primarily from an act of war or the negligence of the United States. To the extent consistent with other laws, strict liability shall extend to costs incurred by the United States for control and abatement of conditions, such as fire or oil spills, which threaten lives,

property or the environment, regardless of whether the threat occurs on areas that are under Federal jurisdiction. Stipulations in right-of-way grants and temporary use permits imposing strict liability shall specify a maximum limitation on damages which, in the judgment of the authorized officer, is commensurate with the foreseeable risks or hazards presented. The maximum limitation shall not exceed \$1,000,000 for any one event, and any liability in excess of such amount shall be determined by the ordinary rules of negligence of the jurisdiction in which the damage or injury occurred.

(c) In any case where strict liability is imposed and the damage or injury was caused by a third party, the rules of subrogation shall apply in accordance with the law of the jurisdiction in which the damage or injury occurred.

(d) Except as provided in paragraph (f) of this section, holders shall be fully liable for injuries or damages to third parties resulting from activities or facilities on lands under Federal jurisdiction, in accordance with the law of the jurisdiction in which the damage or injury occurred.

(e) Except as provided in paragraph (f) of this section, holders shall fully indemnify or hold harmless the United States for liability, damage or claims arising in connection with the use and occupancy of right-of-way or permit areas.

(f) If a holder is a State or local government, or agency or instrumentality thereof, it shall be liable to the fullest extent its laws allow at the time it is granted a right-of-way grant or temporary use permit. To the extent such a holder does not have the power to assume liability, it shall be required to repair damage or make restitution to the fullest extent of its powers at the time of any damage or injury.

(g) All owners of any interest in, and all affiliates or subsidiaries of any holder of a right-of-way grant or temporary use permit, except for corporate stockholders, shall be jointly and severally liable to the United States in the event that a claim cannot be satisfied by a holder.

(h) Except as otherwise expressly provided in this section, the provisions

in this section for a remedy is not intended to limit or exclude any other remedy.

(i) If the right-of-way grant or temporary use permit is issued to more than one holder, they shall be jointly and severally liable under this section.

§ 2883.1-5 Common carriers.

(a) Pipelines shall be constructed, operated, and maintained as common carriers. The owners or operators of pipelines shall accept, convey, transport, or purchase without discrimination all oil or gas delivered to the pipeline without regard to whether such oil or gas was produced on Federal or non-Federal lands. In the case of oil or gas produced from Federal lands or from the resources on the Federal lands in the vicinity of the pipeline, the Secretary may, after a full hearing with due notice thereof to interested parties and a proper finding of facts, determine the proportionate amounts to be accepted, conveyed, transported, or purchased.

(b) The common carrier provisions of this section shall not apply to any natural gas pipeline operated by any person subject to regulation under the Natural Gas Act or by any public utility subject to regulation by a State or municipal regulatory agency having jurisdiction to regulate the rates and charges for the sale of natural gas to consumers within the State or municipality. Where natural gas not subject to State regulatory or conservation laws governing its purchase by pipeline companies is offered for sale, each pipeline company shall purchase, without discrimination, any such natural gas produced in the vicinity of the pipeline.

(c) The authorized officer shall require, prior to issuing or renewing a right-of-way grant, that the applicant submit and disclose all plans, contracts, agreements, or other information or material which the authorized officer considers necessary to determine whether a right-of-way grant shall be issued or renewed and the terms and conditions which should be included in the grant. Such information may include, but is not limited to:

(1) Conditions for, and agreements among, owners or operators regarding the addition of pumping facilities,

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looping, or otherwise increasing the pipeline or terminal's throughput capacity in response to actual or anticipated increases in demand;

(2) Conditions for adding or abandoning intake, offtake, or storage points or facilities; and

(3) Minimum shipment or purchase tenders.

§ 2883.1-6 Export.

With certain exceptions, domestically produced crude oil transported through a pipeline is subject to the provisions of section 28(u) of the Mineral Leasing Act of 1920 as amended (30 U.S.C. 185), and the Export Administration Act of 1969 as amended (50 U.S.C. 2401), and may not be exported without Presidential and congressional approval.

§ 2883.2 Holder activity.

(a) The actions of holders of right-of-way grants or temporary use permits shall be regulated by the appropriate agency head having jurisdiction over the Federal lands involved, unless other arrangements are agreed to by the authorized officer and agency head.

(b) An applicant shall promptly notify the authorized officer of any changes in its plans, financial condition, or other factors relevant to the application, and shall modify the application promptly to reflect any such changes. If the requirements of this subsection are not complied with in the opinion of the authorized officer, the application may be rejected.

(c) The holder shall at all times keep the authorized officer informed of his or her address, and in the case of a corporation, of the address of its principal place of business and the names and addresses of its principal officers.

(d) Any proposed change in the route of the pipeline or change in the use of Federal lands under the Act will require an amended or new right-of-way grant or temporary use permit from the authorized officer. Any unauthorized activity may be subject to prosecution under applicable laws.

(e) Holders of pipeline right-of-way grants issued before November 16, 1973, must apply under the Act and these regulations for modifications of the route or change in the use of Federal

lands in connection with such right-of-way.

(f) The authorized officer may ratify or confirm a right-of-way grant or temporary use permit that was issued under any provision of law if the right-of-way grant or temporary use permit is modified to comply with the provisions of the Act and regulations. Such modifications are subject to the joint approval of the right-of-way holder and the authorized officer.

§ 2883.3 Construction procedures.

(a) Unless otherwise stated in the right-of-way grant or temporary use permit, construction may proceed immediately after delivery to the authorized officer of the applicant's written acceptance of the right-of-way grant or temporary use permit.

(b) If a notice to proceed requirement has been imposed under § 2882.3(m) of this title, the holder shall initiate no construction, occupancy, or use until the authorized officer issues an appropriate notice to proceed.

§ 2883.4 Operation and maintenance.

Prior to the beginning of pipeline operations, the holder shall submit to the authorized officer a certification of construction, verifying that the pipeline system has been constructed and tested in accordance with the terms of the right-of-way grant, and in compliance with any required plans and specifications, and applicable Federal and State laws and regulations.

§ 2883.5 Immediate temporary suspension of activities.

(a) If the authorized officer determines that any activity being conducted or authorized by a holder within a right-of-way or temporary use permit area is endangering public health or safety or the environment, he may order the immediate suspension of that activity and immediate remedial action.

(b) The authorized officer may order immediate suspension of an activity irrespective of any action that has been or is being taken by another Federal agency or a State agency.

(c) The authorized officer may give an immediate suspension order orally or in writing at the site of the activity

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to the holder or a contractor or subcontractor of the holder, or to any representative, agent, employee, or contractor of any of them, and the suspended activity shall cease at that time. As soon as practicable, the authorized officer shall confirm the order by a written notice to the holder addressed to the holder or the holder's designated agent.

(d) An order of temporary suspension of activities shall remain effective until the authorized officer issues an order permitting resumption of activities.

(e) Any time after an order of suspension has been issued, the holder may file with the authorized officer a request for permission to resume. The request shall be in writing and shall contain a statement of the facts supporting the request.

(f) The authorized officer may render an order to either grant or deny the request to resume 5 working days of the date the request is filed. If the authorized officer does not render an order on the request within 5 working days, the request shall be considered denied, and the holder shall have the same right to appeal the denial as if an order denying the request had been issued.

§ 2883.6 Suspension and termination of right-of-way grants and temporary use permits.

If the right-of-way grant or temporary use permit provides by its terms that it shall terminate on the occurrence of a fixed or agreed-upon condition or event, the right-of-way grant or temporary use permit shall thereupon automatically terminate by operation of law, unless some other procedure is specified in the right-of-way grant or temporary use permit.

§ 2883.6–1 Suspension and termination of right-of-way grants.

(a) The authorized officer may institute procedures for suspension or termination of a right-of-way grant if it is determined that:

(1) The holder has failed to comply with any term, condition, or stipulation of the right-of-way grant or applicable laws or regulations.

(b) The holder has deliberately failed to use the right-of-way for the purpose

for which it was granted or renewed for a continuous 2-year period.

(c) Where the authorized officer determines that a situation under § 2883.6 or § 2883.6–1 of this title exists in connection with a right-of-way grant, he or she shall give written notice to the holder, and refer the matter to the Office of Hearings and Appeals for a hearing before an Administrative Law Judge pursuant to 43 CFR part 4. The authorized officer shall suspend or terminate the right-of-way grant if the Administrative Law Judge determines that grounds for suspension or termination exists and that such action is justified.

[44 FR 58129, Oct. 9, 1979, as amended at 47 FR 38807, Sept. 2, 1982]

§ 2883.6–2 Suspension and termination of temporary permits.

(a) The authorized officer may institute procedures for suspension or termination of a temporary use permit if it is determined that:

(1) The holder has failed to comply with any term, condition or stipulation of the permit or applicable laws or regulations; or

(2) The holder has deliberately failed to use the temporary use permit area for the purpose for which it was issued or renewed;

(b) Where the authorized officer determines that a situation under § 2883.6 of this subpart or this section exists, he or she shall give written notice to the holder. The holder may file a written request for review of the notice to the next higher level of authority. The reviewing official shall, within 10 days of or receipt of such a request, arrange for a review of the activities that prompted the suspension or termination notice. The reviewing official shall, within a reasonable time, affirm, modify or cancel the notice and shall provide the holder with a written determination.

(c) A holder may appeal a decision issued under paragraph (b) of this section pursuant to 43 CFR part 4.

§ 2883.7 Change in Federal jurisdiction or disposal of lands.

(a) Where a right-of-way grant or temporary use permit administered

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under these regulations traverses Federal lands that are transferred to another Federal agency, administration of the right-of-way shall, at the discretion of the authorized officer, be assigned to the acquiring agency unless such assignment would diminish the rights of the holder.

(b) Where a right-of-way grant or temporary use permit traverses Federal lands that are transferred out of Federal ownership, the transfer of the lands shall, at the discretion of the authorized officer, either include an assignment of the right-of-way, or be made subject to the right-of-way or the United States may reserve unto itself the lands encumbered by the right-of-way.

[47 FR 38807, Sept. 2, 1982]

§ 2883.8 Restoration of Federal lands.

Within a reasonable time after termination, revocation or cancellation of a right-of-way grant, the holder shall, unless directed otherwise in writing by the authorized officer, remove such structures and improvements and restore the site to a condition satisfactory to the authorized officer. If the holder fails to remove all such structures and improvements within a reasonable period, as determined by the authorized officer, they shall become the property of the United States, but the holder shall remain liable for the cost of removal of the structures and improvements and for restoration of the site.

[47 FR 38807, Sept. 2, 1982]

Subpart 2884—Appeals

§ 2884.1 Appeals procedure.

(a) All appeals under this part from any final decision of the authorized officer shall be taken in accordance with part 4 of 43 CFR to the Office of the Secretary, Board of Land Appeals.

(b) All decisions of the authorized officer under this part shall remain effective pending appeal unless the Secretary rules otherwise. Petitions for the stay of a decision shall be filed with the Office of Hearing and Appeals, Department of the Interior.

[44 FR 58129, Oct. 9, 1979, as amended at 53 FR 17702, May 18, 1988]

Subparts 2885–2886 [Reserved]

Subpart 2887—Over Lands Subject to Mineral Lease

§ 2887.0–3 Authority.

Section 29 of the Act of February 25, 1920, as amended (30 U.S.C. 186), provides in part that any permit, lease, occupation or use permitted under that Act shall reserve to the Secretary of the Interior the right to permit upon such terms as he may determine to be just, for joint or several use, such easements or rights-of-way, including easements in tunnels upon, through or in the lands leased, occupied or used as may be necessary or appropriate to the working of the same, or of other lands containing the deposits described in this Act, and the treatment and shipment of the products thereof by or under authority of the Government, its lessees or permittees, and for other public purposes. Application for such easements or rights-of-way shall be filed in accordance with applicable laws and regulations.

Group 2900—Use; Leases and Permits

PART 2910—LEASES

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